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QUESTION PRESENTED FOR REVIEW

Whether the factual determinations of the Circuit Court of St. Clair County, Illinois, and the Appellate Court of Illinois, Fifth Judicial District, that the respondent was subjected to custodial interrogation under *Miranda* by an undercover police officer while incarcerated in a county jail should be disturbed by This Court?

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CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment XIV, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SUMMARY OF ARGUMENT

This case falls squarely within the express holding of *Miranda* v. *Arizona*, 384 U.S. 436 (1966). This Court has consistently applied *Miranda* to cases that do fall within its express holding. The courts below found that Lloyd Perkins was (1) in custody, (2) questioned or interrogated, and (3) the interrogation was initiated by law enforcement agents. These are factual questions to be resolved by the lower courts in applying the well-settled principles of *Miranda*. That Lloyd Perkins was interrogated by an undercover agent not known by Lloyd Perkins to be a police officer does not take this case outside the confines of

the *Miranda* decision. The concerns that powered the *Miranda* decision are still present, and demonstrate that a valid waiver of the right against self-incrimination was not made by Lloyd Perkins. The custodial setting is inherently coercive, and that inherent coercion should have been dispelled by informing Lloyd Perkins of his right to remain silent and to have an attorney present during any interrogation, and allowing him to make the knowing choice of whether to exercise those rights. This Court should therefore affirm the judgments of the Circuit Court of St. Clair County, Illinois, and of the Appellate Court of Illinois, Fifth Judicial District.

ARGUMENT

THE WELL-SETTLED PRINCIPLES OF *MIRANDA* V. *ARIZONA* ARE APPLICABLE TO AGENTS OF THE STATE WHO ACT AS UNDERCOVER PLANTS AND CONDUCT SURREPTITIOUS INTERROGATIONS OF INCARCERATED DEFENDANTS IN THE POLICE-DOMINATED AND CONTROLLED ENVIRONMENT OF A JAIL.

In *Miranda* v. *Arizona*, 384 U.S. 436 (1966), this Honorable Court held that "the prosecution may not use statements, whether exculpatory or inculpatory, stemming from *custodial interrogation* of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." *Miranda*, 384 U.S. at 444 (emphasis added). The procedural safeguards to which This Court referred are the now-familiar *Miranda* warnings, which must be given prior to any questioning by law enforcement agents, that the individual:

> has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for

> him prior to any questioning if he so desires . . . . But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him.

Miranda, 384 U.S. at 479. In *Miranda* This Court determined that "concrete constitutional guidelines [under the fifth and fourteenth amendments of the Constitution of the United States] for law enforcement agencies and courts to follow" were necessary to ensure that there was a knowing, voluntary, and intelligent waiver of the defendant's rights under those amendments when a defendant was interrogated by law enforcement agents while in custody. *Miranda*, 384 U.S. at 442.

The State conceded in the courts below, and silently concedes in This Court, that Lloyd Perkins was not given *Miranda* warnings by Agent Parisi or Charlton. This concession is unremarkable, since both Parisi and Charlton testified at the hearing on the motion to suppress that *Miranda* warnings were not given to Lloyd Perkins. (J.A.55, 77) Consequently, the facts of this case come under the clear holding of *Miranda*, and demonstrate that Lloyd Perkins was subjected to "custodial interrogation".

This Court has on more than one occasion noted the desirability of the "bright line" rule of *Miranda*, and the need for certainty in the application of *Miranda* by all involved in the criminal justice system. *E.g.*, *Berkemer* v. *McCarty*, 468 U.S. 420, 432 (1984); *Fare* v. *Michael C.*, 442 U.S. 707, 718 (1979). *Cf. New York* v. *Quarles*, 467 U.S. 649, 658 (1984) (in recognizing the narrow "public safety exception" to the *Miranda* rule, the Court recognized that it lessened "the desirable clarity of that rule"). If other cases that come within *Miranda's* express holding

are exempted from the rule, this desirable feature would be lost, which can only bring confusion and uncertainty to the application of *Miranda*. Consequently, the State of Illinois' position is against the sound policy rationale of *Miranda's* "bright line" holding.

In *Miranda* This Court defined "custodial interrogation" as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda*, 384 U.S. at 444. Thus, the Circuit Court of St. Clair County and the Appellate Court of Illinois merely applied the facts of this case to the well-settled law of *Miranda*, and determined as a factual matter that the three elements of *Miranda*—(1) that Perkins was in custody, (2) that Perkins was questioned or interrogated, and (3) that this questioning was initiated by the police—were present in this case. Such factual findings of the circuit court are within its discretion to make and cannot be overturned by the reviewing court in Illinois unless manifestly erroneous. *People* v. *Conner*, 78 Ill. 2d 513, 401 N.E.2d 513 (1979). The Appellate Court's decision merely reflects that the circuit court's factual findings are not manifestly erroneous and, consequently, had to be affirmed as a matter of Illinois procedural law.

The following discussion of the *Miranda* factors demonstrates the correctness of the result reached below.

A. Lloyd Perkins Was In Custody For Purposes Of *Miranda* v. *Arizona*.

The State of Illinois admitted in the courts below that Lloyd Perkins was in custody under *Mathis* v. *United States*, 391 U.S. 1 (1968). *See also Beckwith* v. *United States*, 425 U.S. 341, 346 (1976); *Oregon* v. *Mathiason*, 429 U.S. 492, 494 (1977). Before This Court the State of

Illinois does not seriously contend that Lloyd Perkins was not in custody for purposes of *Miranda*. In *Mathis*, This Court held that a person who is in custody for an offense other than the one being investigated is still in custody for purposes of *Miranda*, and stated that nothing in *Miranda* warrants "a curtailment of the warnings to be given persons under interrogation by officers based on the reason why the person is in custody." *Mathis*, 391 U.S. at 4-5. Since Lloyd Perkins was incarcerated in the Montgomery County Jail at the time he was interrogated by Agent Parisi and Charlton, Perkins was quite obviously in custody. *See Holyfield* v. *State*, 101 Nev. 793, 711 P.2d 834, 837 (1985).

The Solicitor General's amicus brief attempts to deflect the obvious conclusion that Lloyd Perkins was in custody by asserting that "a prison inmate should be deemed to be in custody for purposes of *Miranda* only if he is subjected to more than the usual restraint on his liberty to depart." (Brief for the United States at 11) This contention can presumably be derived from the perception that the prison or jail has become the home of the prisoner and, therefore, a familiar place. That is not the case here, since Lloyd Perkins had been arrested only two days before, and was incarcerated in the Montgomery County Jail, not the Illinois Department of Corrections.

Further, whether the atmosphere is unfamiliar or familiar is simply irrelevant to the inquiry. One may be in the very familiar atmosphere of his home and still be in custody for purposes of *Miranda*. *Orozco* v. *Texas*, 394 U.S. 324 (1969). In *Orozco*, This Court rejected the argument "that since petitioner was interrogated on his own bed, in familiar surroundings, our *Miranda* holding should not apply." *Orozco*, 394 U.S. at 326.

The Solicitor General's argument could also be founded upon the premise that the prisoner's home is not an "interrogation environment". However, it is irrelevant whether there was an "interrogation environment". In *Oregon* v. *Mathiason*, 429 U.S. 492 (1977), This Court held that the defendant was not "in custody" for purposes of *Miranda* even though the defendant was being questioned by police officers at the police station. The Court held that the defendant was not "in custody" because he voluntarily came to the police station at the telephoned request of the police officer, was not under arrest, and was free to leave at any time. The Court noted that the question is whether the defendant was "in custody", not whether there was a "coercive environment." *Mathiason*, 429 U.S. at 495. *Mathiason* rejected the principal contention that the "interrogation environment" in which the questioning occurred required *Miranda* warnings.

Whether an individual is in custody is to be determined objectively, not by the subjective belief of the defendant. *Berkemer* v. *McCarty*, 468 U.S. 420, 442 (1984). Here Lloyd Perkins was incarcerated in the Montgomery County Jail. He consequently was in a custodial setting. *United States* v. *Henry*, 447 U.S. 264 (1980). This setting was dominated entirely by the police, and subject to all the coercive tactics inherent in such a setting. The setting was controlled to such an extent that the police could determine who would be Lloyd Perkins' constant companions while incarcerated. Since Lloyd Perkins had been arrested only two days before the interrogation occurred, the *Miranda* Court's concern that "[a]n individual swept from familiar surroundings into police custody, surrounded by antagonistic forces, and subjected to the techniques of persuasion described above cannot be otherwise than under compulsion to speak" is present. *Miranda*, 384

U.S. at 461. Lloyd Perkins was isolated from the public, "cut off from the outside world", which was a great concern of the Court in *Miranda*, 384 U.S. at 445, 448, 455, and found to be absent from the routine traffic stop by the side of the road in *Berkemer* v. *McCarty*, 468 U.S. 420, 438 (1984), in which This Court found the defendant to be not in custody.

Consequently, Lloyd Perkins was "in custody" for purposes of *Miranda*.

B. Lloyd Perkins Was Subjected To Questioning For Purposes Of *Miranda* v. *Arizona*, Where The Questioning Was Initiated By Agent Parisi And Charlton.

Miranda requires that there be questioning or interrogation of the defendant. The Court's definition of "custodial interrogation" as "*questioning initiated* by law enforcement officers after a person has been taken into custody" makes that clear. *Miranda*, 384 U.S. at 444 (emphasis added). The Circuit Court of St. Clair County and the Appellate Court of Illinois found that questioning or interrogation by Parisi and Charlton did occur. (Appendix to Cert. Pet. at 11) (R.C69) *People* v. *Perkins*, 176 Ill. App. 3d 443, 531 N.E.2d 141, 144 (5th Dist. 1988). The State of Illinois also concedes that questioning of Lloyd Perkins took place. (Brief for Petitioner 5-9; Petition for Writ of Certiorari at 4) Parisi and Charlton were not just placed near Lloyd Perkins to hear whatever Perkins might say, or to have general conversations not related to the focus of the investigation; they were active agents in eliciting the information they desired. *Cf. Kuhlmann* v. *Wilson*, 477 U.S. 436, 459 (1986) (to demonstrate a sixth amendment violation the defendant must demonstrate that the informant in the jail "took some action, beyond merely listening"); *United States* v. *Henry*, 447 U.S. 264,

271 (1980) (defendant's sixth amendment right violated by the elicitation of incriminating statements that were the product of "conversation"). Parisi did not ask Lloyd Perkins an innocuous question and receive a totally unexpected response. Parisi and Charlton directly questioned Lloyd Perkins abut what they had been sent into the jail to learn. Parisi and Charlton initiated the discussion of the murder, and both prodded Lloyd Perkins for more details when he became silent.

In *Rhode Island* v. *Innis*, 446 U.S. 291, 300-01 (1980), This Court stated:

> We conclude that the *Miranda* safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent. That is to say, the term "interrogation" under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.

Under either phrasing of the test of "interrogation", Lloyd Perkins was interrogated for purposes of *Miranda*. The defendant was expressly questioned by Parisi and Charlton. The police acted with the sole purpose of obtaining an incriminating statement from Lloyd Perkins, of compelling him to make a statement when he otherwise would not do so freely and voluntarily. *Miranda*, 384 U.S. at 457, 464-65. Further, the questioning was initiated by the police by placing Parisi and Charlton into the cell with Lloyd Perkins, and Parisi and Charlton, not Perkins, initiated the questioning of Perkins. (J.A.59)

Consequently, the factual finding that Parisi and Charlton initiated the questioning and interrogated Lloyd Perkins is amply supported by the record.

C. Questioning Was Initiated By "Law Enforcement Officers" For Purposes Of *Miranda* v. *Arizona*.

Miranda mandates that before "law enforcement officers" may question someone in custody, he must be advised of his rights. The key ingredient is that the questioning is by "law enforcement officers" or other "agents of the State". It is obvious that statements made to a private citizen are admissible without *Miranda* warnings. *People* v. *Hawkins*, 53 Ill. 2d 181, 290 N.E.2d 231 (1972).

The circuit court found that Parisi and Charlton were "agents of the State" when they questioned Lloyd Perkins in the Montgomery County Jail. (Appendix to Cert. Pet. at 11) (R.C69) This factual finding is amply supported by the record. The State concedes this obvious factual conclusion in its brief, and notes that this is a case of "undercover agents". (Brief for Petitioner at 12)

John Parisi was a police officer, a special undercover narcotics agent working for the Metropolitan Enforcement Group of Southwestern Illinois. (J.A.16-17,22,40) While Charlton was not a police officer, nor apparently paid by the State, it is clear from the history of his association with the police and by his actions that he had become an agent of the State. *Mathis* v. *United States*, 391 U.S. 1 (1968); *Estelle* v. *Smith*, 451 U.S. 454 (1981); *Holyfield* v. *State*, 101 Nev. 793, 711 P.2d 834, 837 (1985). The only purpose that Charlton had in this undercover scam was to assist Parisi in interrogating Lloyd Perkins. Charlton was "functioning as an instrument of the police". *United States* v. *Brown*, 466 F.2d 493, 495 (10th Cir. 1972).

That Lloyd Perkins did not know he was speaking to agents of the State is not relevant, since the subjective state of mind of the defendant is not the relevant inquiry. The "bright line" rule of *Miranda* requires an objective determination of whether a state agent is involved. The defendant may believe that he is being interrogated by a state law enforcement officer, but if in fact he is not, *Miranda* warnings are not required to be given for any statement to be admissible. *See People* v. *Vlcek*, 114 Ill. App. 2d 74, 252 N.E.2d 377 (2d Dist. 1970). In *Holyfield*, the Nevada Supreme Court recognized the need for the objective determination of whether a state agent is involved, and rejected the State's contention "that *Miranda* applies only to those situations in which a figure of authority directly interrogates an accused." *Holyfield*, 711 P.2d at 837, 840.

Consequently, Charlton and Parisi were "law enforcement officers" under *Miranda*.

D. The Concerns That Powered The Decision In *Miranda* v. *Arizona* Are Present In This Case, And The Facts Of This Case Fall Within The Situations For Which *Miranda* v. *Arizona* Was Designed.

This Court in *Patterson* v. *Illinois*, 487 U.S. ____, 108 S.Ct. 2389, 101 L.Ed. 2d 261 (1988), recognized that *Miranda* is applicable to situations such as presented in this case. In *Patterson* This Court, by Chief Justice Rehnquist, stated that "a surreptitious conversation between an undercover police officer and an unindicted suspect would not give rise to any Miranda violation as long as the 'interrogation' was not in a custodial setting, see Miranda, 384 U.S. at 475". *Patterson*, 487 U.S. at ____, 101 L.Ed. 2d at 275 n.9.

This approach follows the well-settled law of *Miranda*. The focus is not upon the legal issue of whether *Miranda*

applies to undercover police agents in jails—*Miranda* does apply. As noted by the Court in *Miranda*, "[t]he fundamental import of the privilege while an individual is in custody is not whether he is allowed to talk to the police without the benefit of warnings and counsel, but whether he can be interrogated." *Miranda*, 384 U.S. at 478. Under this approach the focus is factual, whether there has been an "interrogation". This factual issue has been settled in this case by both the Circuit Court of St. Clair County and the Appellate Court of Illinois. Just as the Appellate Court of Illinois was bound by the circuit court's factual determinations, This Court also should defer to the factual findings of the lower courts. *North Carolina* v. *Butler*, 441 U.S. 369, 370-71 (1979).

The State of Illinois before This Court, as in the courts below, takes the position that *Miranda* is simply not applicable to this case. In its brief before This Court, the State of Illinois quotes the decision in *Colorado* v. *Connelly*, 479 U.S. 157, 170 (1986), that "[t]he sole concern of the Fifth Amendment, on which *Miranda* was based, is governmental coercion". (Brief for Petitioner at 18) The State of Illinois continues with the argument that because Lloyd Perkins did not know that he was dealing with a governmental agent, there could not be any governmental coercion and, therefore, the fifth amendment's guarantee against self-incrimination is not applicable. The State of Illinois also quotes *Berkemer* v. *McCarty*, 468 U.S. 420, 437 (1984), "that [f]idelity to the doctrine announced in *Miranda* requires that it be enforced strictly, but only in those types of situations in which the concerns that powered the decision are implicated". (Brief of Petitioner at 19) The State of Illinois then simply concludes that the concerns expressed in *Miranda* are not present in this case. Lloyd Perkins disagrees with these conclusions of

the State of Illinois, and asserts that the concerns that powered the decision in *Miranda* are present in this case.

In *Johnson* v. *New Jersey*, 384 U.S. 719 (1966), This Court stated:

> Our opinion in Miranda make it clear that the prime purpose of these rulings is to guarantee full effectuation of the privilege against self-incrimination, the mainstay of our adversary system of criminal justice. See, ante, pp. 714-719. They are designed in part to assure that the person who responds to interrogation while in custody does so with intelligent understanding of his right to remain silent and of the consequences which may flow from relinquishing it. In this respect the rulings secure scrupulous observance of the *traditional principle, often quoted but rarely heeded to the full degree, that "the law will not suffer a prisoner to be made the deluded instrument of his own conviction."* Thus while Escobedo and Miranda guard against the possibility of unreliable statements in every instance of in-custody interrogation, they encompass situations in which the danger is not necessarily as great as when the accused is subjected to overt and obvious coercion.

Johnson, 384 U.S. at 729-30 (emphasis added), quoting 2 Hawkins, Pleas of the Crown 595 (8th ed. 1824). *See also Estelle* v. *Smith*, 451 U.S. 454, 462 (1981); *Culombe* v. *Connecticut*, 367 U.S. 568, 581 (1961). In this case, the lower courts refused to allow the prisoner Lloyd Perkins to be made the "deluded instrument of his own conviction". The courts below determined that Lloyd Perkins did not intelligently or understandingly relinquish his right against self-incrimination, or the consequences that flowed from that relinquishment, during the interrogation process. Lloyd Perkins' relinquishment of his right to remain silent was not the product of a free, voluntary, and deliberate choice, but was rather the product of police

deception and overreaching. *See Colorado* v. *Connelly*, 479 U.S. 157, 170 (1986).

The Court in *Miranda* was deeply concerned about several factors that make "custodial interrogation" inherently coercive; those factors are present in undercover custodial interrogations. The Court in *Miranda* was concerned that the waiver of the right to remain silent must be a free and rational choice (*Miranda*, 384 U.S. at 465), and must be made voluntarily, knowingly, and intelligently (*Miranda*, 384 U.S. at 465, 475, 478). In *Miranda* The Court was concerned that a valid waiver of the defendant's important constitutional rights could not be obtained if "the accused was threatened, *tricked, or cajoled* into a waiver". *Miranda*, 384 U.S. at 476 (emphasis added). That Lloyd Perkins was tricked into such a waiver is amply reflected by his assertion of his rights to remain silent and to counsel immediately after he was informed of his rights under *Miranda* when he was arrested on March 31, 1986, the day after he made the statement to Parisi and Charlton. (J.A.21,29,37,39) In this regard, the Appellate Court's statement that "[t]here is no authority in these circumstances for the police to do indirectly what they may not do directly" is quite appropriate. *People* v. *Perkins*, 176 Ill. App. 3d 443, 531 N.E.2d 141, 145 (5th Dist. 1988). (Appendix to Cert. Pet. at 8) *See also State* v. *Travis*, 360 A.2d 548, 551 (R.I. 1976). Although the State of Illinois believes this conclusion to be "simply wrong" (Brief for Petitioner at 23), this concern expressed by the Appellate Court and the Court in *Travis* is valid. Once interrogation by undercover agents is ripped from under the cover of *Miranda*, this technique will become the tool of choice by law enforcement to obtain evidence against an accused, even if he has invoked his right to remain silent in questioning by individuals known

by him to be police officers. This danger was obviously present in *Travis*, and was a prime consideration in that Court's decision.

The Court in *Miranda* further noted that the modern practice of custodial interrogation is "psychologically rather than physically oriented." *Miranda*, 384 U.S. at 448-49, 457. The danger to fifth amendment values of the various and numerous psychological ploys that can be used by undercover agents of the State in jails in order to trick a confession from a defendant is extremely great. A defendant in a county jail is in a "police-dominated atmosphere", and he has no real choice in his companions or with whom he associates. *Miranda*, 384 U.S. at 445. He is held virtually "incommunicado", deprived of "any outside support". *Miranda*, 384 U.S. at 445, 455. In this atmosphere he is subject to all the psychological ploys noted in *Miranda*, including kindness, emotional appeals, friendly-unfriendly appeals, excuses, as well as trickery and deception. *Miranda*, 384 U.S. at 450-55.

As noted by This Court in *United States* v. *Henry*, 447 U.S. 264, 274 (1980), "the mere fact of custody imposes pressures on the accused; confinement may bring into play subtle influences that will make him particularly susceptible to the *ploys* of undercover Government agents." (emphasis added) That an undercover agent "interrogates" a defendant in such an atmosphere is a violation of the right against self-incrimination, because the "adversary positions" are not "well-established" and the parties are not "'arm's-length' adversaries". *Henry*, 447 U.S. at 273. While the State of Illinois posits that the "deception inherent in undercover work actually serves to dispel the most significant source of potential coercion identified by *Miranda*" (Brief for Petitioner at 21), it cannot argue that other significant sources of potential

coercion do not remain. These sources of potential coercion are still "official coercion" in violation of *Miranda*.

The State of Illinois quotes This Court's decision in *Colorado* v. *Connelly*, 479 U.S. 157, 170 (1986), that "the Fifth Amendment privilege is not concerned 'with moral and psychological pressures to confess emanating from sources other than official coercion'", *quoting Oregon* v. *Elstad*, 470 U.S. 298, 305 (1985). (Brief for Petitioner at 22) In *Connelly*, the defendant approached a police officer in public and confessed that he had committed a murder. Connelly was informed of his rights under *Miranda*, waived those rights, and made further statements. Later, it was determined that Connelly had confessed because "the voice of God" had told him to confess. This Court determined that "[t]he voluntariness of a waiver [of the fifth amendment] privilege has always depended on the absence of police overreaching". *Connelly*, 479 U.S. at 170. It was due to the lack of any action by the State in bringing about Connelly's mental state that led This Court to conclude that Connelly's waiver of his fifth amendment privilege was valid. However, state action and official coercion are present in this case. State action occurred by the police placing the undercover agent in the cell with Lloyd Perkins to interrogate Perkins. Moreover, it is on the objective view of the undercover agent as an agent of the State, not the "deluded belief" of the defendant, that the courts must focus.

The State of Illinois would also want This Court to believe that *United States* v. *Henry*, 447 U.S. 264 (1980) and *Hoffa* v. *United States*, 385 U.S. 293 (1966), have settled the question of whether *Miranda* is applicable to the situation of an undercover agent questioning an inmate in a jail. (Brief for Petitioner at 12) However, *Hoffa* merely stated the obvious conclusion that *Miranda* was

not applicable because Hoffa was not in custody at the time the informant was engaged in discussions with Hoffa. This Court in *Henry* understood this important distinction when it stated, "[i]t is quite a different matter when the Government uses undercover agents to obtain incriminating statements from persons *not in custody* but suspected of criminal activity prior to the time charges are filed." *Henry*, 447 U.S. at 272 (emphasis added). The quotation used by the State of Illinois in its brief must be understood in that context. The Court in *Henry* did not understand *Hoffa* to stand for the proposition that undercover agents are never required to give *Miranda* warnings before a "custodial interrogation".

Consequently, This Court should affirm the judgments of the Circuit Court of St. Clair County and the Appellate Court of Illinois, Fifth Judicial District, because those courts merely applied the settled law of *Miranda* to the particular facts of this case. If This Court concludes that the lower courts erroneously applied *Miranda* and reverses the judgment of the Appellate Court, This Court should remand the cause to the Appellate Court for further proceedings to determine whether the Constitution of the State of Illinois has been violated. The Circuit Court of St. Clair County based its judgment upon "not only the Federal Constitution, but the Constitution of the State of Illinois". (R.C83) While the Appellate Court did not rely on the Illinois Constitution in reaching its decision, it should be allowed to determine whether the judgment of the circuit court can be upheld on that basis.

CONCLUSION

Because the courts below properly applied *Miranda* to this case, the respondent, Lloyd Perkins, respectfully request that the judgments of the Circuit Court of St. Clair County and of the Appellate Court of Illinois, Fifth Judicial District, be affirmed. If This Court reverses the Appellate Court, This Court should remand the cause to the Appellate Court of Illinois to determine whether the judgment of the circuit court must be affirmed under the Constitution of the State of Illinois.

Respectfully submitted,

DANIEL M. KIRWAN*
(Appointed by this Court)
Deputy Defender

DAN W. EVERS
Assistant Defender

Office of the State Appellate Defender
Fifth Judicial District
Route 15 East—P.O. Box 2430
Mount Vernon, Illinois 62864
(618) 244-3466

Counsel for Respondent
**Counsel of Record*